

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

NEW RIVERSIDE CORPORATION D/B/A  
MILWAUKEE RIVERSIDE THEATER <sup>1/</sup>

Employer

and

Case 9-RC-17206  
(Formerly 30-RC-6083)

MILWAUKEE THEATRICAL STAGE EMPLOYEES  
LOCAL 18, OF THE INTERNATIONAL ALLIANCE OF  
THEATRICAL STAGE EMPLOYEES, MOVING PICTURE  
TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE  
UNITED STATES, ITS TERRITORIES AND CANADA,  
AFL-CIO <sup>2/</sup>

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1/</sup> The name of the Employer appears as corrected at the hearing.

<sup>2/</sup> The name of the Petitioner appears as corrected at the hearing.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a corporation, is engaged in the operation of a theater at Milwaukee, Wisconsin, herein referred to as the theater. There is no history of collective bargaining affecting any of the approximately 29 employees in the unit found appropriate.

The parties are in essential agreement, and I find, that a unit of all full-time and regular part-time stagehands employed by the Employer at its Milwaukee, Wisconsin theater, excluding all office clerical employees, managerial employees, cleaning crew employees, concessionary employees, professional employees, guards and supervisors as defined in the Act is appropriate for purposes of collective bargaining. The Employer and the Petitioner also agree on a formula, which I find to be appropriate, for determining the eligibility of the stagehands to vote in the election. However, the parties disagree on the alleged supervisory status of the stage manager and technical director, Kurt Holzhauer, and the electrician, Richard Grilli.<sup>3/</sup> The Employer asserts that Holzhauer and Grilli are supervisors within the meaning of Section 2(11) of the Act and must be excluded from any unit found appropriate. On the other hand, the Petitioner contends that Holzhauer and Grilli are not statutory supervisors, that they share a community of interest with the other unit employees and are appropriately included in the unit. The parties stipulated that there are no other issues in dispute.

The Employer's theater is available for rent by outside promoters, organizations, charities, or any other entity, for purposes of holding a public or private function. The Employer operates a box office under an agreement with Ticketmaster, a national retailer of tickets for a wide variety of entertainment events. The Employer primarily presents two general types of shows, a Broadway style production that typically has an extended run format and a variety style type of production that typically runs for one or two dates.<sup>4/</sup> The Employer, through its promotional arm, promotes or co-promotes with other entities various productions that play the theater. However, many of the theater events are promoted in their entirety by outside promoters. The Employer does not sponsor its own productions.

The Employer is owned by Al Parnes who has a 7-year lease on the theater building with Towle Realty with an option to buy. The Employer's hierarchy who are responsible to

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<sup>3/</sup> It appears that on smaller shows without significant technical support that Holzhauer is considered the production manager and that his responsibilities are expanded.

<sup>4/</sup> Broadway shows are typically scheduled at the theater on an eight-show week basis.

Parnes includes its president, Leonard Christianson, and general manager Van Johnson. Larry Mandell, whose precise title is not specified in the record, is in charge of booking the talent for the theater and has additional responsibility to interact with promoters to facilitate the various productions. Johnson is in overall charge of the day-to-day operations of the facility and is responsible for dealing with radio and television mediums for the apparent purpose of advertising and publicizing the various events held at the theater. Under Johnson are several managers who are charged with responsibility for distinct areas of the theater operation. These managers include a house manager, a security manager, a section manager, a concession manager, a liquor manager, a box office manager and a stage manager (Holzhauer). Johnson's direct supervisory authority is apparently limited to the area of responsibilities of the box office and house managers. Holzhauer and Grilli are the only two employees directly connected with the work of the stagehands who are continuously employed on all theater events.

The sole issue in dispute, as previously noted, is the supervisory status of Holzhauer and Grilli. Section 2(11) of the Act defines a supervisor as a person:

. . . having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. . . .

It must be noted, however, that in enacting Section 2(11) of the Act, Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors and not “straw bosses, leadmen, set-up men and other minor supervisory employees.” *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). See also, *NLRB v. Bell Aerospace Co.*, 416 NLRB 267, 280-281, 283 (1974). Although the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status, such authority must be exercised with independent judgment and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981); see also, *Allen Services Co.*, 314 NLRB 1060 (1994); *Queen Mary*, 317 NLRB 1303 (1995). Thus, the exercise of “supervisory authority” in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. *Feralloy West Corp. and Pohng Steel America*, 277 NLRB 1083, 1084 (1985); *Chicago Metallic Corp.*, supra; *Advanced Mining Group*, 260 NLRB 486, 507 (1982). Moreover, it is well established that the burden of proving that an individual is a supervisor rests on the party asserting supervisory status. See, *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491 (1993); *Ohio Masonic Home*, 295 NLRB 390, 393 (1989). In reaching my decision in the subject case, I have carefully considered the extensive Board and Court precedent addressing supervisory status as set forth in Section 2(11) of the Act.

## RELEVANT FACTS:

In a broad sense, Holzhauer's principle responsibility is to ensure that the productions playing at the theater are held as scheduled. Holzhauer spends about 60 to 70 percent of his work time performing the various tasks of a stagehand, including unloading trucks, opening cases, hanging lights, running wire, putting curtains or drops on battens <sup>5/</sup>, hooking up washing machines and running telephone lines. Holzhauer spends the remaining 30 to 40 percent of his work time acting as a liaison to the incoming production and performing a variety of tasks to facilitate its timely presentation. Thus, Holzhauer is responsible for hiring between 6 and 30 stagehands depending on the production. Holzhauer is paid \$250 for each show and receives \$500, on those occasions, when two Broadway performances are given in a day. Holzhauer and Grilli, like all stagehands, receive no health insurance or any other fringe benefits. Holzhauer has an office in the backstage area which is locked when he is away from the facility.

A typical contract between the Employer and a show promoter contains a technical rider that provides information such as the stage dimensions required, the type of equipment needed such as sound and lights, catering requirements, limousine service and hotel accommodations. The contract rider also contains an estimate of the number of stagehands required to perform various tasks such as loading and unloading, up-rigging <sup>6/</sup>, electrical work and operating spotlights. Holzhauer often interacts with a representative of the promoter to modify the technical rider to fit the constraints and needs of the theater. In this connection, Holzhauer has input on and influences the number and type of stagehands required for a production.

Holzhauer maintains a list of stagehands who have worked at the theater or who are interested in working at the theater. This list contains only the names of the individuals and their telephone numbers. The original list of stagehands with an established work history at the theater was given to Holzhauer by the former general manager for the Employer at the time that Holzhauer was promoted to the position of stage manager and technical director in early 1996. The original list reflected to some degree an employee's seniority in terms of prior service with the Employer but, "not name by name." Holzhauer was not told how or in what order to hire stagehands off the list for productions. The list is extensive as Holzhauer and Grilli called 71 different stagehands off the list to work various productions in 1998.

The current list has changed dramatically from the initial list received by Holzhauer as he has added and removed names from the list at his discretion. For example, Holzhauer adds names to the list when another stagehand refers an individual to him, when he is approached directly about a position, or when he receives a note from the box office that an individual is interested in being hired as a stagehand. After Holzhauer uses a stagehand who is new to the theater he evaluates the employee's work performance to determine what type of skills the

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<sup>5/</sup> Part of the theater's system of counterweights that holds up stage scenery.

<sup>6/</sup> Up-riggers hang sound and lighting elements at various rigging points off the floor of the theater.

individual possesses and what duties to assign the individual in the future. Names are apparently deleted from the list or simply ignored when a stagehand is no longer available to work for the Employer. The list is not reviewed by any other member of the Employer's management. Holzhauer generally calls stagehands from the list in a top down order to the extent that the individuals who are higher on the list possess the skills required by the particular production. Holzhauer determines which stagehands possess which skills based on his personal knowledge and evaluation of their abilities. Holzhauer evaluates the stagehands' skills on an ongoing basis because it generally takes a couple of years working as a stagehand to acquire skills to perform the more sophisticated jobs such as up-rigging and electrician. Thus, Holzhauer, with no input or oversight from anyone in a higher position, effectively "promotes" and determines the stagehands' rate of pay by independently assessing which job they are capable of performing. According to Holzhauer, he has the authority to determine whether or not to use an employee on the list or to remove an employee from the list for poor performance. However, he has apparently never exercised his authority to remove an individual from the list for poor performance.

When Holzhauer hires an individual to perform stagehand work at the theater he has some latitude in setting that individual's initial hourly rate. The typical starting rate is \$10 dollars an hour. However, the record discloses that up-riggers receive a flat rate of \$175 a show and that a number of other stagehands are paid \$12 or \$14 an hour on the basis of their greater experience and skills. The record reflects that Johnson only becomes aware of the pay rate for a new stagehand when a bill for his or her services is submitted by Holzhauer. In this connection, Holzhauer maintains a written record of the hours worked by all the stagehands. During each show or production, Holzhauer and Johnson meet with a representative of the promoter for a "settlement" of the theater's production-related costs.<sup>7/</sup> At these meetings, Holzhauer presents Johnson with an estimate of the cost of stagehand services for the production based on the number of stagehands used, their respective pay rates and the number of hours that they have worked or are projected to work. Holzhauer regularly presents Johnson with an adjustment to this estimate when the load out of a show takes more or less time than projected or when one or more stagehands fail to report to work as scheduled.

The record reflects that stagehands are occasionally required to work overtime for which they receive overtime pay. Holzhauer has never sought authorization from any of his superiors before authorizing stagehands to work overtime. Rather, Holzhauer merely submits the number of overtime hours worked to Johnson for payment in the same manner as he submits all other hours worked by stagehands. The record also discloses that on at least one occasion Holzhauer and Grilli met with Parnes and jointly recommended that a number of specified stagehands receive a raise to avoid the risk of losing their services to other venues that had higher wage rates. Parnes granted the requested increase to each of the stagehands named by Holzhauer and Grilli, including Grilli, who was one of the recipients of a wage increase.

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<sup>7/</sup> In a Broadway production the "settlement" occurs at the end of the run of the performance.

The record further reflects that the degree of supervision exercised or the type of assignments made by Holzhauer varies depending on the show that is being presented. In this regard, both union productions, referred to as yellow card presentations, and nonunion productions, known as non-yellow card shows, are presented in the theater. Yellow card productions are generally limited to Broadway shows. There are generally less than ten Broadway shows which play the theater on an annual basis and there may be as few as two or three such productions in a given year. When a yellow card production is scheduled, the Petitioner's referral hall is contacted by a representative of the show's promoter and the requested number of stagehands who possess the requisite skills are sent to the theater. Once at the theater the stagehands work primarily under the direction of "roadies" who travel with the production. In larger productions, there are typically "roadies" who direct each department or classification of local stagehands who are employed to perform a variety of specific tasks such as rigging, electrical work, carpentry work, sound control and loading. In smaller productions, a roadie may be responsible for directing stagehands in a number of departments or classifications. Although Holzhauer works during such shows, he does not engage in direct supervision of the unionized stagehands.

The record discloses, however, that Holzhauer directs nonunion stagehands who are employed at the theater even on the dates that it is hosting a yellow card production. Indeed, the record reflects that unionized stagehands typically do not perform all of the work necessary to prepare the theater for a yellow card event. Rather, when a yellow card show is held at the theater nonunion stagehands are utilized to remove all of the house goods, including curtains, electrics, lighting instruments, dimmer racks and any loose and extraneous material from the stage and basement. The nonunion stagehands are also responsible for lowering the orchestra pit to the level required by the production. This type of preparation for the set up or load in of a Broadway (yellow card) production is referred to as "striking" the theater or taking it to its "four walls." <sup>8/</sup> Following the disassembly and load out of a Broadway (yellow card) production this process is reversed and nonunion stagehands are utilized to "restore" the theater to the condition it was in prior to the "striking." Holzhauer hires the stagehands to work the "striking" and to restore the theater and he assigns them to perform the tasks necessary to complete these jobs.

Many of the non-yellow card productions that play the theater are also accompanied by traveling stagehands or "roadies" employed by the promoter. However, there are approximately 20 smaller variety type productions that are presented each year that do not have their own "roadies." The record reflects that when "roadies" are employed by a non-yellow card production they generally make a manpower request of Holzhauer or Grilli. Holzhauer and Grilli then select the employees who are to perform the required tasks. Following the assignment of local stagehands to a specified area, a "roadie" may supervise their work. It appears, however, that the "roadie" contacts Holzhauer or Grilli to resolve any problems with the local stagehands. Holzhauer and Grilli hire and supervise all the stagehands for productions that do not have "roadies."

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<sup>8/</sup> This arrangement is set forth in the contract for most Broadway productions.

Regardless of whether the event playing at the theater is a yellow card or non-yellow card production, Holzhauer performs a wide variety of maintenance tasks during the day of a show. These tasks may include turning on the blowers, air conditioners, adjusting the heat, emptying garbage, replacing light bulbs, maintaining the house washing machine and ice machine and running extra telephone lines. Additionally, Holzhauer supports the production by acquiring needed supplies such as dry ice, food or bottled water. Holzhauer also coordinates parking in the theater's shared alley and ensures that its elevator is in good repair and operational. Holzhauer does not perform all maintenance tasks at the theater himself and it is undisputed that he and Grilli have on some occasions hired individuals to perform painting, repair and building tasks within the theater.<sup>9/</sup>

With regard to discipline, the record reflects that Holzhauer has issued oral reprimands to stagehands on numerous occasions. However, Holzhauer has not issued more severe discipline, such as written warnings, suspensions or discharge.

Regarding Grilli's supervisory status, I note that he is at the high end of the stagehand wage scale, receiving \$14 an hour. He spends about 90 percent of his time performing electrical work, other stagehand tasks and a wide range of maintenance duties when there is a yellow card show. Grilli spends approximately 10 percent of his time as an assistant to Holzhauer. In this connection, the record establishes that for some shows Grilli acts as a "crew chief" or "steward"<sup>10/</sup> and that he regularly hires stagehands in the same manner as Holzhauer. As "crew chief" or "steward" Grilli assigns stagehands to perform various tasks and is responsible for supervising the work he assigns. It is not clear from the record precisely how often Grilli acts as "steward" or "crew chief," but it appears to occur on a somewhat regular basis. Finally, Grilli often functions as a liaison to the traveling personnel of a yellow card production particularly by assisting with any needs regarding the theater's electrical supply for which the Employer is responsible and equipment tie-ins to electrical sources.

Grilli functions in the same manner as Holzhauer with respect to obtaining needed stagehands. Although Holzhauer may, on some occasions, direct Grilli to call employees from the list of stagehands, the record discloses that sometimes Grilli calls in stagehands from the list on his own initiative. Indeed, Grilli estimates that he makes at least eight to ten calls for stagehands on every show. On the record Holzhauer testified that Grilli did not make as many calls as Grilli claimed, but even Holzhauer concedes that Grilli makes a substantial number of calls on a regular basis. Holzhauer has never instructed Grilli in the manner to call stagehands from the list and the record discloses that Grilli utilizes the list in a fashion similar to Holzhauer.

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<sup>9/</sup> It is not clear from the record whether the individuals hired to perform these tasks were stagehands hired from the call list.

<sup>10/</sup> The use of the word "steward" in this context does not imply a position in a union. Rather, it is used somewhat interchangeably with the term crew chief.

Thus, Grilli calls stagehands for employment beginning at the top of the list and working his way down depending on whether he knows them to possess the requisite skills for the available work. Grilli evaluates the stagehands' skills, like Holzhauer, based on his experience in the industry and in working with the stagehands on previous jobs. Grilli's evaluation of the skills of the stagehands must also necessarily be of an ongoing nature because, as previously noted, lengthy on-the-job training is required before Holzhauer or Grilli determine that a stagehand can adequately perform the more sophisticated tasks and thus earn the higher rates of pay. Unlike Holzhauer, Grilli is not responsible for maintaining and submitting records of the hours worked by stagehands.

## CONCLUSIONS:

The record discloses that both Holzhauer and Grilli exercise considerable independent judgment when they hire stagehands off the call-in list for employment at the theater. The list is maintained by Holzhauer and is not reviewed by any higher management personnel. Holzhauer and Grilli determine which stagehands possess the requisite skills to perform a particular job and contact the number of stagehands needed to perform each task. They follow a top down progression on the employment list in making these determinations provided that the stagehands that are higher on the list possess the skills needed. The original list contains stagehands with a longer history of work at the theater. However, the names on the current list are not set forth strictly by seniority and no one has ever told Holzhauer or Grilli what manner or procedure to use in hiring stagehands off the list. Moreover, Holzhauer, using his own discretion, adds and deletes names from the list and both Holzhauer and Grilli effectively determine the wages received by stagehands by promoting them to higher level jobs as they gain additional experience. The Board has found individuals who possess and exercise the type of discretion exercised by Holzhauer and Grilli in hiring, supervising and indirectly establishing wages for casual or on-call employees to be statutory supervisors. *Union Square Theatre Management, Inc.*, 326 NLRB No. 17, slip op. p. 2 (1998); *Blockbuster Pavilion*, 314 NLRB 129, 132-133 (1994).

In *Union Square*, the Board in reversing a regional director's finding that technical directors, with duties similar to those of Holzhauer and Grilli, were not statutory supervisors, principally relied on the fact that the technical directors, like Holzhauer and Grilli, exercised independent judgement in the hiring of temporary employees. *Union Square*, supra, at p. 2. The Board found independent judgment in the hiring process in part because the technical directors in *Union Square* possessed "complete discretion to decide whom to hire." Additionally, the technical directors determined whether the individuals they were considering hiring possessed the requisite skills. The type of hiring authority exercised by the technical directors in *Union Square* is nearly identical to the authority possessed and exercised by Holzhauer and Grilli.

In *Blockbuster Pavilion* the Board adopted an administrative law judge's finding that an employer's crew chiefs, with duties similar to Holzhauer and Grilli, were statutory supervisors. The judge predicated his finding of supervisory status in large part on the fact that the crew chiefs, "acting entirely independently, decide which stagehands on [the employer's] call lists will



work events.” Here, as in *Blockbuster Pavilion*, Holzhauer and Grilli exercise substantial discretion in determining whom to hire from the stagehand list. Significantly, however, Holzhauer and Grilli possess even greater discretion over whom to call as a stagehand than the crew chiefs in *Blockbuster Pavilion*, because Holzhauer actually controls and Grilli effectively recommends who is placed on or removed from the list. Thus, although crew chiefs in *Blockbuster Pavilion* influenced the composition of the employer's call lists, the lists were apparently reviewed by the crew chiefs' superiors.

In *Blockbuster Pavilion* the judge also noted that the crew chiefs supervised stagehands to a certain extent, were responsible for keeping accurate records of their hours and determined to an extent how long they would work. The similarities between the responsibilities of the crew chiefs in *Blockbuster Pavilion* and the duties of Holzhauer and Grilli are obvious. Both Holzhauer and Grilli clearly assign stagehands to perform a variety of jobs and in many instances thereafter supervise them in the performance of such tasks. Additionally, Holzhauer is responsible for keeping time records for the stagehand. Finally, Holzhauer and Grilli, depending on who made the calls, often determine how long a stagehand might work. In this regard, I note that the personnel needs for the “in” or set up of the show and the “out” or disassembly of the show are often different from the needs for the actual production. Accordingly, some stagehands might work one part, two parts, or all three parts, depending on personnel needs as determined by Holzhauer or Grilli.

Succinctly, it is clear that based on their control of the call list, their exercise of discretion in determining whom to hire off the list and the indirect control of the stagehands' wages resulting from informal promotions by calling them to work in higher paying job classifications, Holzhauer and Grilli possess and exercise various indicia of supervisory authority enunciated in Section 2(11) of the Act. Although Holzhauer testified that he had never removed a name from the list for poor performance or failed to call someone from the list for that reason, he acknowledged that he possessed the authority to do so. It is well established that it is the possession rather than the exercise of supervisory authority that determines whether a particular individual is a supervisor within the meaning of the Act. *Cox Enterprises Inc., d/b/a Atlanta Newspapers*, 263 NLRB 632, 633 (1982). Consequently, it is the *existence* of one of the enumerated indicia of supervisory authority rather than its use that determines status. *Hook Drugs, Inc.*, 191 NLRB 189, 191 (1971). Moreover, as noted above, both Holzhauer and Grilli have regularly engaged in responsible direction of stagehands and Holzhauer is responsible for maintaining time records.

In reaching my conclusion that Holzhauer and Grilli are statutory supervisors, I have carefully considered the arguments and positions advanced by the parties at the hearing and in their briefs. Specifically, I find inapposite or distinguishable the cases relied on by the Petitioner in support of its position that Holzhauer and Grilli are not supervisors. Initially, the Petitioner's contention that the calling of stagehands, who cannot be required to report to work, requires only routine judgment is not supported by the record. In its position, the Petitioner cites the Board's decision in *Providence Hospital*, 320 NLRB 717 (1996), for the proposition that an individual who can ask but not require an employee to come in to work or to work overtime, exercises only

limited authority that does not evidence independent judgment. The Petitioner also cites the Board's decision in *St. Francis Medical Center-West*, 323 NLRB 1046 (1997), for the same proposition. Both *Providence Hospital* and *St. Francis* are clearly distinguished from the instant case.

In *Providence Hospital* charge nurses were found not to be statutory supervisors in part because they could not require *already employed* staff to fill in for absent employees on a shift or to work overtime. In *Providence Hospital*, the Board noted that before they decided to call in an employee, the charge nurses checked with a statutory supervisor who effectively determined staffing changes and that the charge nurses merely had access to a list containing the names of *current employees* they could utilize in an effort to locate employees who might be available to perform the work. The charge nurses could not recruit nonemployees for available work. Unlike Holzhauser and Grilli, the charge nurses in *Providence Hospital* certainly could not hire individuals to perform specific jobs. The stagehands in the instant matter, unlike the employees a charge nurse might call upon in *Providence Hospital*, are not carried on the Employer's payroll but have a reasonable expectancy of further employment based only on their work history and whether Holzhauser or Grilli elects to offer them available work. Thus, the selection of employees to work an unscheduled shift or to work overtime in *Providence Hospital*, unlike here, involved a type of routine work assignment.

Similarly, in *St. Francis Medical Center-West*, the individual alleged to be a supervisor merely asked employees to come to work or to work overtime from a list containing the names of current employees maintained by the employer. The individual at issue in *St. Francis*, unlike Holzhauser and Grilli, could not hire employees or affect their status as employees but merely engaged in routine assignment. The remaining cases cited by the Petitioner in its brief involve the general principles relied on specifically by the Board in deciding supervisory issues and are not applicable to the subject case.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that Kurt Holzhauser and Richard Grilli possess and exercise indicia of supervisory authority set forth in Section 2(11) of the Act and are supervisors. Accordingly, I shall exclude them from the unit

#### THE STIPULATED ELIGIBILITY FORMULA:

The parties agreed, and I find, that a formula should be used to determine those employees who have a sufficient interest in the working conditions of the unit to be eligible to vote. In agreement with the parties, I find that all employees in the appropriate unit who had gross income from the Employer in excess of \$864 during calendar year 1998 are eligible to vote. The \$864 figure is based on an employee working an average of one 8-hour day per month at a rate of \$9 an hour. I conclude that this formula is sufficiently inclusive to permit optimum employee enfranchisement and free choice, without enfranchising individuals who have no real continuing interest in the terms and conditions of employment offered by the Employer. See, *Trump Taj Mahal Casino*, 306 NLRB 294, 296 (1992). Accordingly, I find that the employees covered by

the formula agreed to by the parties and set forth in the Direction of Election are eligible to vote in the election.

THE UNIT:

For all the foregoing reasons, I find the following unit is appropriate for the purposes of collective bargaining:

All full-time and regular part-time stagehands employed by the Employer at its Milwaukee, Wisconsin facility, excluding all office clerical employees, managerial employees, cleaning crew employees, concessionary employees, and all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. <sup>11/</sup> Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Also eligible to vote are employees in the unit who have received gross income from the Employer in excess of \$864 during calendar year 1998 and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Milwaukee Theatrical Stage Employees Local 18, of the

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<sup>11/</sup> The parties agreed to a mail ballot election. Although election arrangements are at the discretion of the undersigned, the parties' desire for a mail ballot election will be given careful consideration in determining the mechanics of the election.

International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL-CIO.

### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **February 19, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **February 26, 1999**.

Issued at Cincinnati, Ohio this 12<sup>th</sup> day of February 1999.

Richard L. Ahearn, Regional Director  
Region 9, National Labor Relations Board  
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177-8520-0800  
177-8520-2400